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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re E-2 Brokers, Inc.

Serial No. 74/656,481

Bernhard Kreten for E-2 Brokers, Inc.

Wm. Patrick Shanahan, Trademark Examining Attorney, Law
Office 101 (R. Elsworth Williams, Managing Attorney).

Before Seeherman, Hairston and Bucher, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Applicant, E-2 Brokers, Inc. has filed an application for
registration of the mark "DAILY PURE" for "teas."¹

The Trademark Examining Attorney issued a final refusal to
register based upon Section 6(a) of the Trademark Act, 15 U.S.C.
§1056(a), on the ground that applicant has refused to comply

¹ Serial No. 74/656,481, filed April 3, 1995, alleging use
since March 10, 1995.

with the requirement for a disclaimer of the word "PURE." The Trademark Examining Attorney takes the position that the word "PURE" is merely descriptive matter under Section 2(e)(1) of the Lanham Act, 15 U.S.C. §1052(e)(1), and therefore it must be disclaimed prior to the issuance of a federal trademark registration.

Applicant has appealed the final refusal to register. Briefs have been filed, but applicant did not request an oral hearing. We affirm the refusal to register.

The central question before the Board in this case arises under §2(e)(1) of the Trademark Act. The Trademark Examining Attorney stands by his position that the term "PURE" within the composite mark "DAILY PURE" is merely descriptive and that the two terms do not combine to create a new unitary connotation.²

The Trademark Examining Attorney points to various pieces of information from applicant's own packaging, including the following designation which is placed on the top and side of the boxes in which the goods are marketed:

² We note that much of applicant's brief is directed to whether "DAILY PURE" is merely descriptive of applicant's goods. However, that issue is not before us.



The packaging also shows applicant's trade name, "Naturally Pure Enterprises." The text on the box states that "'DAILY PURE' is blended from the finest all-natural ingredients...", "ALL NATURAL BOTANICALS," "Flavored ... with natural flavor" and is "caffeine free." These notations all stress the natural, pure and healthful properties of this tea. The packaging appeals to the health consciousness of consumers by stressing the descriptive meaning of the word "pure" as applied to tea. Hence, the average consumer would conclude that this term, as used in the mark DAILY PURE, is merely touting the product as being tea completely free of any additives, fillers or excipients.³

Applicant argues that consumers would not view "PURE" in its mark as describing tea which is free of additives, but would understand DAILY PURE to suggest that it cleanses the body. However, given the over-riding emphasis on

³ The Trademark Examining Attorney has made of record three third-party marks for goods including tea, in which the word "pure" is disclaimed in the federal registrations. However, we have not given these registrations any weight in reaching our final decision, given that the evidence involved so few examples,

"Pure" as a feature of the tea, we are not persuaded that the average consumer would think that the term "Pure" referred to an effect the tea would have on the tea drinker.⁴

Applicant argues that we must consider the mark in its entirety. In this vein, applicant argues that any descriptive meaning of the individual word "PURE" is lost in the mark as a whole. That is, that "DAILY PURE" is a "unitary" mark. However, because of the way "PURE" appears in the mark as well as the references to "DAILY" and "PURE" in the packaging, the average consumer would regard each word as having a different suggestive or descriptive significance. For example, the packaging also uses the word "Daily" in the context of "DAILY MAINTENANCE: Drink one cup daily before breakfast."

Accordingly, "Daily" suggests the recommended frequency of usage, while "Pure" speaks to the natural ingredients. Together, they connote two different features of the goods. These two strains do not merge into any new meaning or double entendre. Inasmuch as the combination of "DAILY" and "PURE"

and where it is not clear-cut that the usage in those composite marks is totally analogous to the present case.

⁴ In support of this contention, applicant points to quotations taken from the packaging trade dress, i.e., that drinking this tea "leads to purification or cleansing of the body" because it is "helpful in activating the major eliminatory organs."

does not create any new, double meaning, we find that the word "PURE" as used in the mark "DAILY PURE" would immediately be perceived as describing a feature of the goods.

Decision: In view of the foregoing, the requirement for a disclaimer of the term "PURE" is affirmed and, in the absence of a disclaimer, registration is refused. In accordance with Trademark Rule 2.142(g), if a disclaimer is filed within thirty days of the mailing date of this decision, we will set aside this decision and the mark will be published for opposition.

E. J. Seeherman

P. T. Hairston

D. E. Bucher

Administrative Trademark
Judges, Trademark Trial and
Appeal Board